rently, a right to the instant attention of the drovers, to neglect everything else, every other duty, even a public duty which they may be called on to perform, and clear his field of the cattle, from which he might entirely have excluded them if he had taken the ordinary means people do of fencing their land from the public highway. I think the owner of land adjoining a highway, upon whose property cattle have strayed, has a right to have the cattle removed within a reasonable time, with reference to all the circumstances that may belong to the transaction at the time of its occurrence, that he has no other or greater right than that, and inasmuch as cattle upon the highway require to be directed and care to be taken with reference both to the public and with reference to the cattle themselves, and especially during the night—it appears to me that if, for instance, the cattle can be taken to a place of safety within a few minutes, and then the drovers may return and with perfect safety to all the cattle, drive off those which have strayed, I think that is a circumstance that may fairly be presented to the jury. If the cattle cannot be put in a place of safety for many hours, it may be a matter to be submitted to the jury to say that they ought then to have run the risk, and to have removed the cattle more immediately. It appears to me that the jury, with all the circumstances before them, have had the question put to them whether the cattle have been removed within a reasonable time with reference to the circumstances of the particular case. I think, therefore, the direction was wrong, and that the rule for a new trial ought to be made absolute. My brother Channell is of the same opinion.—*Rule absolute for a new trial.*

In the Court of Queen's Bench, February 1859.

THE LONDON AND NORTH-WESTERN RAILWAY *vs.* GLYN.

The plaintiffs, common carriers, effected an insurance against fire with defendant; one of the conditions of the policy was, that "goods held in trust or on commission are to be insured as such, otherwise the policy will not extend to cover such property." £15,000 was declared to be insured on "goods, their (the plaintiffs) own, and in trust as carriers," on certain premises therein

named, and the insurers were "liable to pay, reinstate, or make good, at their option, to the said assured, all damage or loss which the said assured shall suffer by fire on the property herein particularized, not exceeding on each item the sum hereinbefore declared to be insured:"

Held, that the policy extended to cover the whole value of any goods sent to plaintiffs to be carried, and not merely the plaintiffs' interest as carriers:

Held, further, that plaintiffs could recover the value of a package of silk destroyed on the said premises, by fire, although it had not been declared as required by the Carriers' Act, and therefore they would not be liable as carriers for its loss.

Declaration by the plaintiffs against the defendant, as treasurer of the Globe Insurance Company, on a policy of insurance against loss and damage by fire, dated the 11th December 1854, by which the sum of £15,000 was insured on goods (the plaintiffs' own) and in trust as carriers in a certain warehouse, which had been burnt and destroyed by fire, whereby the plaintiffs sustained a loss on the said goods, which they held in trust as carriers, to the amount of £15,000.

Plea (*inter alia*,) that the plaintiffs did not, by reason of the said burning and destroying by fire, suffer damage or loss upon the said goods.

At the trial before Willes, J., at the Surrey summer assizes 1858, a verdict was entered for the plaintiffs for the amount claimed, subject to the opinion of the court on the following case:—

By the policy of insurance upon which this action is brought, an insurance was on the 11th December 1854, effected by the plaintiffs with the Globe Insurance Company for the sum of £25,000, £10,000 of which was declared to be on a warehouse belonging to the plaintiffs, occupied by Messrs. Pickford, situate at the Camden Town station of the London and Northwestern Railway, and £15,000 "on goods, their (the plaintiffs') own, and in trust as carriers therein." And it was declared that during the continuance of the policy "the capital stock or fund of the Insurance Company shall be subject and liable to pay, reinstate, or make good, at their option, to the said assured, all damage or loss which the said assured shall suffer by fire, on the property herein particularized, not exceeding on each item the sum hereinbefore declared

to be insured;" with a proviso that the policy should be subject to the conditions at the back thereof. By the second of the conditions so endorsed, it was provided, "Goods held in trust or on commission are to be insured as such, otherwise the policy will not extend to cover such property." And by the twelfth condition, "In every case of loss, duly proved, the Insurance Company will reinstate the property, or the assured shall receive satisfaction to the amount thereof, without discount or deduction." The policy being still in force on the 9th June 1857, the warehouse and nearly all the goods then contained in it were consumed and wholly destroyed by fire. All claims upon the policy have been settled and adjusted, except those in respect of the £15,000 insured on goods their own and in trust as carriers, in the warehouse as above mentioned. At the time of the happening of the fire the warehouse contained a large quantity of goods, which for the purposes of this case are to be taken to be goods of the plaintiffs in trust as carriers, within the meaning of the policy. These goods were wholly destroyed by the fire. The plaintiffs seek to recover, in this action, the value of the last mentioned goods. It has been agreed that the rights and liabilities of the plaintiffs and the Globe Insurance Company shall be raised and determined upon selected items of the said goods, and that the claims of the plaintiffs against the Globe Insurance Company in respect of the rest of the said goods shall be adjusted out of court, on the principles which may be applied by the court to the said items.

The plaintiffs were from a time prior to 1847, and have ever since continued to be, common carriers of goods by railway, and as such have during all that time carried goods over the London and Northwestern Railway, among other places, from London to Edinburgh. The Camden Town station mentioned above is the terminal goods station of the plaintiffs in London. On the 9th June 1857, a package of silk of the value of £10, and upwards, was received in London by Messrs. Pickford and Co., as agents for the plaintiffs, to be carried by the plaintiffs from London to Edinburgh. These silks were contained in one package, and the value and nature of such silks were not at the time of the delivery thereof to Messrs. Pick-

ford & Co., declared by the person sending or delivering the same, nor was any increased charge or agreement to pay the same accepted by the person receiving such package. This parcel was deposited by Messrs. Pickford & Co. in the warehouse, preparatory to its being dispatched to its destination, and remained there until it was burnt and destroyed by the fire. Messrs. Pickford & Co., after the fire and before this action, with the authority and on behalf of the plaintiffs, paid to the consignee of the silks, part of the value thereof, which was accepted by the latter in discharge of his claim against the plaintiffs in respect of the said silks. The pleadings and policy were to form part of the case.

The question for the opinion of the court was whether, having regard to the provisions of the Carriers Act, 1 Will. 4, c. 68, the plaintiffs were entiled to recover the value of the silks, or the amount so paid in respect of them as aforesaid. If the court should be of opinion that the plaintiffs were entitled to recover in respect of the selected items, the verdict for the plaintiffs was to stand, subject to the adjustment before mentioned, in accordance with the principles laid down by the court.

Archibald for the plaintiffs.—The only question with which it will be necessary to trouble the court is, whether there is any defence to this action by reason of the provisions of the Carriers Act. The defendants assert that inasmuch as the goods were not "declared," and the plaintiffs therefore are not liable for their loss, the plaintiffs have not sustained any loss beyond any pecuniary interest they might have in the goods, and that they are not entitled to recover against defendants beyond that amount. The nature of the contract of insurance was decided in the case of *Waters* vs. *The Monarch Insurance Company*, 5 E. & B. 870. There the policy was very similar in its terms to the present one, and that case may be taken as conclusive. Lord Campbell, C. J., in his judgment in that case says: "I cannot doubt the policy was intended to protect such goods. . . I think a person entrustd with goods can insure them without orders from the insurer, and even without informing him that there is such a policy. It would be most inconvenient if a wharfinger could not, at his own cost, keep

up a floating policy for the benefit of all who may become his customers. The last point is, to what extent does the policy protect those goods? The defendant says, only the plaintiffs' personal interest. But the policies are in terms to make good all such damage and loss as may happen by fire to the property hereinbefore mentioned. That is a valid contract, and as the property is wholly destroyed, the value of the whole must be made good; not merely the particular interest of the plaintiffs. They will be entitled to apply so much as to cover their own interest, and will be trustees for the owners as to the rest." And Crompton, J., said: "The parties meant to insure those goods with which the plaintiffs were entrusted, and in every part of which they had an interest, both in respect of their lien and of their responsibility to their bailors. What the surplus, after satisfying their own claim, might be, could only be ascertained after the loss, when the amount of their lien at that time was determined; but they were persons interested in every part of the goods." [ERLE, J.—I quite concur, but nothing is there said about the plaintiffs' ability to recover from their owners. WIGHTMAN, J.—I don't think that decision was limited; I think it extended to all the goods. CROMPTON, J.—I always thought that carriers, warehousemen, and others, had floating policies to insure all the goods passing through their hands; why should the parties sending, and the carriers, both insure? The judgment referred to goes to the extent of the insurer's ability to recover for the whole lien and property of persons entrusting property to them. WIGHTMAN, J.—You may take it that this insurance is perfectly legal.] Then the only question is the extent of the insurance, and that is clearly to the whole value of the goods; the object is to insure the full amount for the benefit of the persons to whom the goods belong. The plaintiffs would be liable both in equity and common law to the owners for the balance recovered. *Sideways* vs. *Todd*, 2 Stark. 400. [ERLE, J.—There is a case of doubtful authority on the point (*Allen* vs. *Impett*, 8 Taunt. 263,) which was in fact overruled by *Roper* vs. *Holland*, 3 A. & E. 99, which settled the point; where there is a promise to pay, an action will lie, but a mere equitable claim is not sufficient.]

H. Lloyd, contra.—The plaintiffs insured their own risk as carriers only, and can recover nothing further; the insurance was intended to cover their own loss, and not that of others. The plaintiffs were not bound to pay anything to the owners of the silk; they had a good defence under the Carriers Act, and therefore, personally, they need not have suffered loss. The first question is, who are the assured? and, secondly, what loss, if any, have they sustained? If the assured are the railway company for themselves, and not beyond that as trustees for others, the damage is the liability incurred, and not the sum voluntarily paid by them. *Waters* vs. *The Monarch Insurance Company* is distinguishable from this case; the terms of the two policies are not the same, and Lord Campbell, in his judgment in that case, particularly relies on the terms of the insurance. A special interest may be insured by general words, and yet the insured be entitled to recover only to the amount of his special interest. Arnould on Insurance, 305, 306; *Irving* vs. *Richardson*, 2 B. & Ad. 193; *Wolff* vs. *Horncastle*, 1 Bos. & Pul. 316; *Crowley* vs. *Cohen*, 3 B. & Ad. 478. [CROMPTON, J.—That last case is against you; it shows that a carrier's interest in goods may be insured under the general words "goods and merchandise," and that the insertion of the words "as trustees" is unnecessary.] The words here are not "as trustees," but "in trust as carriers," which words were inserted to comply with the second condition, which requires that the interest assured shall be shown, but not to extend it for the benefit of the owners of the trust property. [CROMPTON, J.—Your argument would be, that there was no necessity to introduce special conditions as to goods held as trustees or as carriers, because a common policy would cover loss to them.] A trustee may insure the property of his *cestui que trust*, but why should the plaintiffs insure any interest but their own? [CROMPTON, J.—To induce parties to entrust them with property, knowing that it was insured.] That may be so with warehousemen and wharfingers, but there is a distinction between those trades and that of a carrier: these latter are generally by law insurers themselves. The question turns upon the policy, which must be regarded in connection with the surrounding circum-

stances, which differ materially from those of *Waters* vs. *The Monarch Insurance Company*. The plaintiffs only meant to insure their own interest; "in trust" is a mere description of property, and not the extent of the interest insured. Why should a carrier have an intention of protecting the property of those who are treating him unfairly, and defrauding him by not declaring the value of the goods sent, and by thus avoiding the payment of extra carriage? [HILL, J.—But are the plaintiffs so defrauded? This is a sort of floating policy, and it is an inducement to persons to send their goods because they know they are insured.] Then it is a temptation to the senders not to declare their more valuable goods. [CROMPTON, J.—I see no fraud. We must look at the policy, and it seems to me to protect the plaintiffs *quâ* trustees.] *Carruthers* vs. *Sheddon*, 6 Taunt. 15, was also cited.

WIGHTMAN, J.—The question raised in this case is, whether the insured are entitled on this policy to recover compensation for more than their own particular interest in these goods; in other words, whether they are entitled to recover for their own particular interest only in the goods, or for the whole value of the goods, including those they held in trust as carriers. I think, according to the terms of this policy, they were insured to the amount of the full value, and that the insurance was not confined to their own interest. The terms of the policy are not ambiguous; the insurance is stated to be upon goods belonging to the Company, and other goods in the warerooms held by them in trust as carriers; and by the second condition it was necessary for the insured to declare what goods they so held in trust for others, and if they neglected to do so, as to such goods the insurance would be void, intending, as it seems to me, to include all property held in trust, as in the case of *Waters* vs. *The Monarch Life Office*, where it was held that persons in the capacity of warehousemen could recover on a policy of this nature, and that they held the amount so recovered, subject to their own charges, in trust for the owners of the goods. It is a voluntary trust, binding on them in a court of equity; if that were not so there might be several insurances on the same goods: that is to say, first, they might be insured by the owner, then by the carrier, and afterwards by the warehouseman.

Now was it not really the meaning of the parties that the insurance should be on the goods generally, leaving the assured to make the adjustment amongst the several claimants? The fact of the plaintiff not being liable to the parties whose goods he held, is not material, as it seems to me that that question also arose in *Waters* vs. *The Monarch Life and Fire Insurance Company*, and the court decided that nevertheless the plaintiff was entitled to recover. That case seems to me undistinguishable from the present, and it seems to me the plaintiff is entitled to insure every interest, although he would not be liable to the owners in case of loss by fire.

ERLE, J.—On the construction of the policy I agree with the rest of the court, and on the terms of that policy I think our judgment should be grounded. I should have been inclined to think that the carrier intended to insure his own interest, but as he is liable for loss or damage by fire, as trustee, he insures for the full amount of value. Then as to the defence that plaintiff and the defendants contracted that the defendants should be at liberty to set up any special defence that might arise, it is doubtful whether they could set up such a special defence, but the case finds that the carriers have paid the senders a part of the value of the goods. If the company mean to limit their liability they must do it by more distinct words.

CROMPTON, J.—I also think that the plaintiffs are entitled to recover to the extent of the full value insured. The plaintiffs insured as trustees, and the loss is loss of trust property. The plaintiffs have an insurable interest, but they are bound to pay over the money received to the owners of the goods, after paying themselves for their own loss. That was so decided in *Waters* vs. *The Monarch Company*. On the construction of this policy I quite agree with my brother Erle; and if the defendants meant to insure on certain specific terms, they ought to have introduced those terms into the policy; but, as they have not, we must hold that the insurance was general, because the condition is, that the policy will not extend to goods held in trust if they are not declared; but here the plaintiffs have declared part of the goods to be held in trust by them as carriers, and for those goods they are entitled to recover; after

paying themselves they will hold the remainder in trust for the owners of the goods. The Carriers Act in no way alters this. I mean the owner of goods may say, "I will be my own insurer, and not declare the goods;" and knowing of the floating policy he may trust to that, and in that there is no fraud. If the plaintiff insure as a trustee, he may recover. In that I see no hardship on the office who contracts with him.

HILL, J.—I am of the same opinion. The question turns entirely on the construction of the policy, and to my mind the parties have used plain words, to which we must give effect. £15,000 is declared to be the value of goods belonging to the plaintiffs and held by them in trust as carriers, but if it were intended to insure solely the plaintiffs' risk, why use the words "in trust as carriers?" The second condition would not have rendered it necessary to insert those words. The observations of my brothers are well worthy of attention; the Company might easily have secured themselves, if they desired it, by inserting apt words; but on the words of this policy I think the plaintiff is entitled to recover, and I think the case of *Waters* vs. *The Monarch Life and Fire Company* governs this case. *Judgment for the Plaintiffs.*

CRIMINAL LAW. ENGLISH CROWN CASES RESERVED.[1]

Larceny.—A finder of lost property is not guilty of larceny in appropriating it to his own use, unless at the time of the finding he had a felonious intent. *Reg.* vs. *Christopher*, 5 Jur., N. S., part 1, p. 24 in which *Reg.* vs. *Thurborn*, 2 Car. & K. 831, was recognized and acted upon. The conviction was quashed, upon the ground that the proper question had not been left to the jury.

The prisoner and the prosecutor's wife were jointly concerned in removing certain goods of the prosecutor from his house. They were afterwards found living together in lodgings taken by the wife in her own name; the property was also found there. The jury were directed, that if they were satisfied that the prisoner and the prosecutor's wife, when they so took the

[1] London Jurist.